IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3314 of 2003
with
CIVIL APPLICATION NO.2422 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KESHAVNAGAR GRAM PANCHAYAT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3314 of 2003
with C.A.No.2422 of 2003
MR YOGESH S LAKHANI for Petitioner No. 1
Mr.Dave, AGP for Respondent No. 1,4
MR HS MUNSHAW for Respondent No. 2 & 3
MR NV ANJARIA for Respondent No. 5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 07/04/2003

ORAL JUDGEMENT

Leave to correct the title of respondent No.1 as State of Gujarat through Secretary, Panchayat Department.

2. Rule. Mr.Dave, Ld.AGP for respondent Nos 1 and 4, Mr.Munshaw for respondent Nos 2 & 3 and Mr.Anjaria for respondent No.5 waive service of rule on behalf of respective respondents. Main Special Civil Application No.3313/03 is taken up for final hearing together with Civil Application with the consent of both sides.

3. The short facts of the case are that formerly there was one Gram Panchayat known as Mirzapur Gram Panchayat. The State Govt in exercise of powers under Gujarat Panchayats Act bifurcated the area of Mirzapur Gram Panchayat into two parts and constituted Mirzapur Gram Panchayat and Keshavnagar Gram Panchayat. The petitioner herein is a newly constituted Keshavnagar Gram Panchayat. It appears that since two Gram Panchayats were constituted the Dist.Development Officer ("DDO" for short) as per the order, dated 24.6.02 passed the order for distribution and apportionment of the assets of the then Mirzapur Gram Panchayat and as per the said order the immovable properties which were situated in newly constituted Mirzapur Gram Panchayat were allocated to Mirzapur Gram Panchayat and the immovable properties which were situated within the limits of newly constituted Keshavnagar Gram Panchayat were allocated to the petitioner Panchayat and so far as cash and grant amounts are concerned they were distributed on 50% basis between the newly constituted gram panchayats.

4. It is the case of the petitioner that the Mirzapur Gram Panchayat-respondent No.5 herein made some representation to the DDO and the petitioners were not aware of such representation, but pending the said representation, on account of insistence by the petitioner-Gram Panchayat amount of Rs.13,25,500/- was disbursed to the petitioner-Gram Panchayat. It is the case of the petitioners that the balance amount as per the earlier order, dated 24.6.02 was required to be allocated and distributed to the petitioner by the Mirzapur Gram Panchayat. However, the DDO as per order, dated 4.3.02 modified the earlier order dated 24.6.02 on the basis of population figures of census of 1991 and instead of 50% apportionment and distribution the Mirzapur Gram Panchayat was allocated 68% of finance, namely, cash and grant amounts etc whereas the petitioner was allocated only 32% and it is that order of the DDO

which is under challenge in this petition.

5. Mr.Y.S.Lakhani, Ld.advocate for the petitioner contended, interalia, that the DDO has passed the impugned order behind the back of the petitioner without giving any opportunity of hearing to the petitioner. He further submitted that as such the DDO, even otherwise also, could not have proceeded to modify the order on the basis of census figures of 1991 and therefore he submitted that the order deserves to be quashed and set aside.

6. On behalf of respondent No.5-Mr.Anjaria submitted that as such the statement made regarding disbursement of only Rs.13,25,500/- is not correct and the respondent No.5-Gram Panchayat has also subsequently disbursed amount of Rs.5,69,322.65ps. Mr.Anjaria submitted that on the basis of guidelines, dated 30.9.1999 the DDO has passed the order. He submitted that when first time, order dated 24.6.02 was passed, hearing was not given and therefore there is no express right of hearing when the second order is passed.

7. On behalf of the State as well as on behalf of Dist.Panchayat, Mr.Dave, the Ld.AGP as well as Mr.Munshaw supported the order passed by the DDO.

8. Having considered the above, I find that it is true that normally when there is a question of apportionment and/or distribution of properties of the Gram Panchayat on account of its division into two or more Gram Panchayats the order by itself is of administrative character and therefore when the first order dated 24.6.02 came to be passed it can not be said that it was obligatory in law on the part of the DDO to give opportunity of hearing to concerned Gram Panchayat unless the powers are read with observance of principles of natural justice. The said question is kept open. However, same may not be the situation when the question of withdrawal or modification of the said order arises. It is well settled that when the adverse order is to be passed which is to result into affecting the rights or financial interests of any party, minimum of principles of natural justice of giving opportunity of hearing by considering the representation or submission of affected party is required to be followed. In the present case, it appears that after the first order, dated 24.6.02 came to be passed the DDO has passed the order dated 4.3.03 without giving opportunity of hearing to the petitioner Gram Panchayat because even if the order is read as it is

it results into altering the financial benefits which were conferred by the earlier order dated 24.6.02. Therefore, the order passed by the DDO on 4.3.03 is in breach of principles of natural justice and deserves to be quashed on the said ground alone.

10. Even otherwise also a bare perusal of the order, dated 4.3.03 which is impugned in this petition goes to show the DDO has taken the decision has taken on the basis of census figures of 1991 for the purpose of apportionment and distribution of properties for two different newly constituted Gram Panchayats pursuant to the notification dated 8.10.01. In my, primafacie, view it would be unfair to the residents of the area if the population figures of census 2001 are not taken into consideration and the basis is made as that of 10 years back. Mr.Lakhani has during the course of arguments submitted that the population as per census of 2001 of the Keshavnagar Gram Panchayat is exceeding 50%. I am examining the said aspect and it will be for the DDO to examine the same. Incidentally, it would not be out of place to mention that the population would be one of the criteria for the purpose of distribution and apportionment of the properties of the Gram Panchayat, but it can not be said to be the sole criteria for such purpose. There are various other factors including the position of old and new area, future development of the area etc. Suffice it to say that the population can not be the sole and only criteria for the purpose of distribution and apportionment of the property if the division of any area is made into two independent local authorities. It will be for the concerned authority to consider the relevance of the same and to take appropriate decision in the matter and I am not expressing any final opinion on said aspect. It appears that in any event the order passed by the DDO solely on the ground of criteria of population and that too of 1991 is, exfacie, unreasonable and arbitrary, more particularly, when the population figures of census of 2001 are available, though it might not have been officially published.

11. In view of the aforesaid discussion, the order, dated 4.3.03 passed by the DDO is quashed and set aside with further direction that the DDO shall consider the matter afresh on the basis of representation of the respondent No.5 for the purpose of modification and/or confirmation of the earlier order taking into consideration all the relevant aspects as well as the aforesaid observations of this court as well as the representation which may be made by the petitioner as

well as respondent No.5 in this regard. The DDO shall render his decision within a period of three months from the date of receipt of writ of this court and until the decision is rendered the provision made for allocation of Rs.5 lacs pursuant to the ad-interim order dated 26.3.03 shall continue with clarification that it will be open for the DDO to make the apportionment accordingly as per the final order which may be passed pursuant to this judgment. Petition is allowed to the aforesaid extent.

12. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

13. In view of the judgment in main matter, there shall be no order on CA No.2422/03 and the civil application stands disposed of accordingly.

7.4.03 (JAYANT PATEL,J)